IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6053 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURENDRANAGAR DISTRICT PANCHAYAT

Versus

KALIBEN NARAYANBHAI HARIJAN SINCE DECEASED AND HIS LEGAL

Appearance:

1. Special Civil Application No. 6053 of 2001

MR HS MUNSHAW for Petitioner No. 1

UNSERVED-EXPIRED (R) for Respondent No. 1

MR KR KOSHTI for Respondents No. 1/1-1/2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/12/2001

ORAL JUDGEMENT

In this petition purporting to be under Article 226 and 227 of the Constitution but in substance a petition under Article 227 of the Constitution, the Surendranagar District Panchayat has challenged the judgment and award dated 8-2-2000 passed by the Labour Court, Surendranagar in Reference (LCS) No. 266 of 1991 by which the Labour Court directed the petitioner Panchayat to reinstate Kaliben Narayanbhai as a Mazdoor

under the District Panchayat with 20% backwages for the period between 8-6-1991 till the date of reinstatement.

2. When this Court issued notice to the respondent workman, affidavit-in-reply is filed by the heirs of deceased workman pointing out that Kaliben Narayanbhai expired on 7-7-1999. Accordingly, the heirs of the deceased respondent have been brought on record.

3. Heard Mr HS Munshaw learned counsel for the petitioner - Panchayat and Mr Koshti for the respondents i.e. heirs of Kaliben Narayanbhai.

4. Various contentions are urged by the learned counsel for the petitioner. The first contention is that the respondent had never worked for 240 days in any of the year and therefore there was no question of violation of section 25F of the Industrial Disputes Act. Hence the award is required to be set aside. Secondly, it is contended that the case in hand is covered by the provisions of section 2(oo)(bb) of the Act as the respondent was working on daily wage basis on a project. As and when the project is over, such daily rated employees services are discontinued. It is also contended that there was delay of 3 to 4 years in moving the machinery under the Industrial Disputes Act and therefore also the reference ought to have been rejected. It is further contended that no work is available now with the Panchayat. Hence the respondent cannot be reinstated in service. It is also contended that the Labour Court erred in awarding 20% of the backwages with effect from the alleged date of termination though reference was filed after more than 3 to 4 years.

5. Since most of the aforesaid contentions except the last one regarding backwages, have relevance mainly qua the direction for reinstatement of the workman, it is not necessary to examine the same as the workman has already expired. In fact the workman had expired before the Labour Court pronounced the award. Hence now there cannot be any question of reinstatement. The learned counsel for the Panchayat however submits that the question of backwages still survives as the heirs are claiming the backwages awarded as per the award of the Labour Court.

6. It is true that for challenging the said direction, the petitioner - Panchayat has to challenge the finding of the Labour Court that the termination of the workman's services was illegal. For this purpose, the learned counsel for the Panchayat has submitted that

the workman had not put in 240 days service in any of the years. On this question, apart from the pleadings wherein the workman had stated that the workman was employed by the Panchayat for 10 years prior to the termination of her services on 1-7-1988, the Panchayat had denied the workman's case that workman's services were illegally terminated and contended that the workman had left service and had not completed 240 days service. The workman, therefore, filed an application before the Labour Court vide Ex.8 for calling upon the Panchayat to produce the muster roll and wage register. The xerox copies produced by the Panchayat with the list Ex.9 however were not proved in evidence and therefore they were not exhibited. Hence the Labour Court had to proceed on the footing that the employer had not produced any record. The witness examined on behalf of the employer also did not throw any light on the question of number of days for which the respondent - workman was employed.

7. Having regard to the aforesaid set of evidence and more particularly having regard to the fact that the original workman who had filed the reference has already expired and also having regard to the fact that the Labour Court denied backwages to the workman for the period between the date of termination and the date of reference and also having regard to the fact that for subsequent period also, the workman has been awarded backwages only to the extent of 20% for the period from 8-6-1991 onwards, the Court is not inclined to exercise its extraordinary prerogative writ jurisdiction under Article 227 or 226 of the Constitution and on this short ground alone, the petition deserves to be dismissed with a clarification that the heirs of the deceased workman Kaliben Narayanbhai shall be entitled to get 20% of the backwages only for the period from 8-6-1991 to 7-7-1999.

8. Subject to the aforesaid rider, the petition is dismissed. Rule is discharged. Interim relief granted earlier stands vacated.

(M.S. Shah,J)

zgs/-